

AMENDED IN SENATE FEBRUARY 6, 2002

AMENDED IN ASSEMBLY APRIL 26, 2001

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 154

Introduced by Assembly ~~Member~~ Members La Suer and Runner

January 31, 2001

An act to ~~add Section 132.1 to the Penal Code, relating to crimes~~ *amend Section 11106 of the Health and Safety Code, relating to controlled substances, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 154, as amended, ~~Runner La Suer. Drug—testing: manufacturing substance that produces false negative~~ *Controlled substances: permits to conduct business.*

~~Existing law provides for drug testing, as specified.~~

~~This bill would provide that any person or entity who knowingly sells, markets, advertises, manufactures, compounds, converts, produces, derives, processes, or prepares any substance with the specific intent to produce a falsely negative drug test result is guilty of a misdemeanor. By creating a new crime, this bill would impose a state-mandated local program upon local governments.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

(1) Existing law provides that any manufacturer, wholesaler, retailer, or any other person or business entity in this state who sells, transfers, or otherwise furnishes any substance contained on a list of specified substances to a person or business entity in this state or any other state or who obtains from a source outside of the state any specified substance shall submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice. Selling, transferring, or otherwise furnishing any specified substance without a permit is a misdemeanor or a felony.

This bill would provide that for any substance added to the list on or after January 1, 2002, the Department of Justice may postpone the effective date of the requirement for a permit for a period not to exceed six months from the listing date of the substance.

(2) The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~ no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 132.1 is added to the Penal Code, to~~
2 ~~read:~~

3 ~~132.1. Any person or entity who knowingly sells, markets,~~
4 ~~advertises, manufactures, compounds, converts, produces,~~
5 ~~derives, processes, or prepares any substance with the specific~~
6 ~~intent to produce a falsely negative drug test result is guilty of a~~
7 ~~misdemeanor. Nothing in this section shall prohibit the sale,~~
8 ~~marketing, advertising, manufacturing, compounding,~~
9 ~~converting, producing, deriving, processing, or preparing of~~
10 ~~general detoxifying products.~~

11 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
12 ~~Section 6 of Article XIII B of the California Constitution because~~
13 ~~the only costs that may be incurred by a local agency or school~~
14 ~~district will be incurred because this act creates a new crime or~~
15 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
16 ~~for a crime or infraction, within the meaning of Section 17556 of~~
17 ~~the Government Code, or changes the definition of a crime within~~

~~the meaning of Section 6 of Article XIII B of the California Constitution.~~

SECTION 1. Section 11106 of the Health and Safety Code is amended to read:

11106. (a) (1) (A) Any manufacturer, wholesaler, retailer, or any other person or business entity in this state who sells, transfers, or otherwise furnishes any substance specified in subdivision (a) of Section 11100 to a person or business entity in this state or any other state or who obtains from a source outside of the state any substance specified in subdivision (a) of Section 11100 shall submit an application to, and obtain a permit for the conduct of that business from, the Department of Justice. ~~And~~ *For any substance added to the list set forth in subdivision (a) of Section 11100 on or after January 1, 2002, the Department of Justice may postpone the effective date of the requirement for a permit for a period not to exceed six months from the listing date of the substance.*

(B) An intracompany transfer does not require a permit if the transferor is a permittee. Transfers between company partners or between a company and an analytical laboratory do not require a permit if the transferor is a permittee and a report as to the nature and extent of the transfer is made to the Department of Justice pursuant to Section 11100 or 11100.1. ~~This~~

(C) ~~This~~ paragraph shall not apply to any manufacturer, wholesaler, retailer, or other person who is licensed by either the State Department of Health Services or the California State Board of Pharmacy, and is also registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(2) Except as provided in paragraph (3), no permit shall be required of any manufacturer, wholesaler, retailer, or other person for the sale, transfer, furnishing, or obtaining of any product which contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription or by a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder.

(3) A permit shall be required for the sale, transfer, furnishing, or obtaining of preparations in solid or liquid dosage form containing ephedrine, pseudoephedrine, norpseudoephedrine, or

1 phenylpropanolamine, unless (A) the transaction involves the sale
2 of ephedrine, pseudoephedrine, norpseudoephedrine, or
3 phenylpropanolamine products by retail distributors as defined by
4 this article over the counter and without a prescription, or (B) the
5 transaction is made by a person or business entity exempted from
6 the permitting requirements of this subdivision under paragraph
7 (1).

8 (b) (1) The department shall provide application forms, which
9 are to be completed under penalty of perjury, in order to obtain
10 information relating to the identity of any applicant applying for
11 a permit, including, but not limited to, the business name of the
12 applicant or the individual name, and if a corporate entity, the
13 names of its board of directors, the business in which the applicant
14 is engaged, the business address of the applicant, a full description
15 of any substance to be sold, transferred, or otherwise furnished or
16 to be obtained, the specific purpose for the use, sale, or transfer of
17 those substances specified in subdivision (a) of Section 11100, the
18 training, experience, or education relating to this use, and any
19 additional information requested by the department relating to
20 possible grounds for denial as set forth in this section, or by
21 applicable regulations adopted by the department. ~~The~~

22 (2) *The* requirement for the specific purpose for the use, sale,
23 or transfer of those substances specified in subdivision (a) of
24 Section 11100 does not require an applicant or permittee to reveal
25 their chemical processes that are typically considered trade secrets
26 and proprietary business information.

27 (c) Applicants and permittees shall authorize the department,
28 or any of its duly authorized representatives, as a condition of
29 being permitted, to make any examination of the books and
30 records of any applicant, permittee, or other person, or visit and
31 inspect the business premises of any applicant or permittee during
32 normal business hours, as deemed necessary to enforce this
33 chapter.

34 (d) An application may be denied, or a permit may be revoked
35 or suspended, for reasons which include, but are not limited to, the
36 following:

37 (1) Materially falsifying an application for a permit or an
38 application for the renewal of a permit.

39 (2) If any individual owner, manager, agent, representative, or
40 employee for the applicant who has direct access, management, or

1 control for any substance listed under subdivision (a) of Section
2 11100, is or has been convicted of a misdemeanor or felony
3 relating to any of the substances listed under subdivision (a) of
4 Section 11100, any misdemeanor drug-related offense, or any
5 felony under the laws of this state or the United States.

6 (3) Failure to maintain effective controls against the diversion
7 of precursors to unauthorized persons or entities.

8 (4) Failure to comply with this article or any regulations of the
9 department adopted thereunder.

10 (5) Failure to provide the department, or any duly authorized
11 federal or state official, with access to any place for which a permit
12 has been issued, or for which an application for a permit has been
13 submitted, in the course of conducting a site investigation,
14 inspection, or audit; or failure to promptly produce for the official
15 conducting the site investigation, inspection, or audit any book,
16 record, or document requested by the official.

17 (6) Failure to provide adequate documentation of a legitimate
18 business purpose involving the applicant's or permittee's use of
19 any substance listed in subdivision (a) of Section 11100.

20 (7) Commission of any act which would demonstrate actual or
21 potential unfitness to hold a permit in light of the public safety and
22 welfare, which act is substantially related to the qualifications,
23 functions, or duties of a permitholder.

24 (8) If any individual owner, manager, agent, representative, or
25 employee for the applicant who has direct access, management, or
26 control for any substance listed under subdivision (a) of Section
27 11100, willfully violates or has been convicted of violating, any
28 federal, state, or local criminal statute, rule, or ordinance
29 regulating the manufacture, maintenance, disposal, sale, transfer,
30 or furnishing of any of those substances.

31 (e) Notwithstanding any other provision of law, an
32 investigation of an individual applicant's qualifications, or the
33 qualifications of an applicant's owner, manager, agent,
34 representative, or employee who has direct access, management,
35 or control of any substance listed under subdivision (a) of Section
36 11100, for a permit may include review of his or her summary
37 criminal history information pursuant to Sections 11105 and
38 13300 of the Penal Code, including, but not limited to, records of
39 convictions, regardless of whether those convictions have been

1 expunged pursuant to Section 1204.5 of the Penal Code, and any
2 arrests pending adjudication.

3 (f) The department may retain jurisdiction of a canceled or
4 expired permit in order to proceed with any investigation or
5 disciplinary action relating to a permittee.

6 (g) The department may grant permits on forms prescribed by
7 it, which shall be effective for not more than one year from the date
8 of issuance and which shall not be transferable. Applications and
9 permits shall be uniform throughout the state, on forms prescribed
10 by the department.

11 (h) Each applicant shall pay at the time of filing an application
12 for a permit a fee determined by the department which shall not
13 exceed the application processing costs of the department.

14 (i) A permit granted pursuant to this article may be renewed one
15 year from the date of issuance, and annually thereafter, following
16 the timely filing of a complete renewal application with all
17 supporting documents, the payment of a permit renewal fee not to
18 exceed the application processing costs of the department, and a
19 review of the application by the department.

20 (j) Selling, transferring, or otherwise furnishing or obtaining
21 any substance specified in subdivision (a) of Section 11100
22 without a permit is a misdemeanor or a felony.

23 (k) (1) No person under 18 years of age shall be eligible for a
24 permit under this section.

25 (2) No business for which a permit has been issued shall
26 employ a person under 18 years of age in the capacity of a manager,
27 agent, or representative.

28 (l) (1) An applicant, or an applicant's employees who have
29 direct access, management, or control of any substance listed
30 under subdivision (a) of Section 11100, for an initial permit shall
31 submit with the application two sets of 10-print fingerprint cards
32 for each individual acting in the capacity of an owner, manager,
33 agent, or representative for the applicant, unless the applicant's
34 employees are exempted from this requirement by the Department
35 of Justice. These exemptions may only be obtained upon the
36 written request of the applicant.

37 (2) In the event of subsequent changes in ownership,
38 management, or employment, the permittee shall notify the
39 department in writing within 15 calendar days of the changes, and



1 shall submit two sets of 10-print fingerprint cards for each
2 individual not previously fingerprinted under this section.

3 *SEC. 2. This act is an urgency statute necessary for the*
4 *immediate preservation of the public peace, health, or safety*
5 *within the meaning of Article IV of the Constitution and shall go*
6 *into immediate effect. The facts constituting the necessity are:*

7 *To ensure fundamental fairness to those permittees and other*
8 *businesses and individuals who have been legally conducting*
9 *business with respect to specified substances prior to their*
10 *inclusion in a list of substances for which a permit to conduct*
11 *business must be first obtained, this act must go into immediate*
12 *effect. Furthermore, because the enactment of this bill would*
13 *afford the Department of Justice the authority to allow for a*
14 *transition period to ensure that all affected parties are provided*
15 *with proper notice of statutory changes that may entail criminal*
16 *liability; provide the Department of Justice with the time needed*
17 *to process applications in a timely manner; and as a result ensure*
18 *that there would be no disruption in commerce or adverse business*
19 *impact, this bill must go into immediate effect.*

